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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

VAHE MESSERLIAN, individually)	Case No.
and on behalf of all others similarly)	
situated,)	<u>CLASS ACTION</u>
)	
Plaintiff,)	COMPLAINT FOR VIOLATIONS
)	OF:
vs.)	
)	THE TELEPHONE CONSUMER
)	PROTECTION ACT [47 U.S.C.
)	§227 ET SEQ.]
THE TONER DOCTOR and DOES 1)	
through 10, inclusive, and each of)	
them,)	
)	<u>DEMAND FOR JURY TRIAL</u>
Defendants.)	
)	
)	
)	
)	

Plaintiff, Vahe Messerlian ("Plaintiff"), on behalf of himself and all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action for himself and others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of The Toner Doctor ("Defendant"), in negligently,

1 knowingly, and/or willfully placing sales, solicitations and/or other telemarketing
2 facsimile messages to Plaintiff's telephone in violation of the Telephone
3 Consumer Protection Act, 47. U.S.C. § 227 *et seq.* ("TCPA"), thereby invading
4 Plaintiff's privacy.

5 **JURISDICTION & VENUE**

6 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
7 a resident of California, seeks relief on behalf of a Class, which will result in at
8 least one class member belonging to a different state than that of Defendant, a
9 company with its principal place of business and State of Incorporation in
10 Canada. Plaintiff also seeks \$500.00 in damages for each message in violation of
11 the TCPA, which, when aggregated among a proposed class in the thousands,
12 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore,
13 both diversity jurisdiction and the damages threshold under the Class Action
14 Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.
15
16

17 3. Venue is proper in the United States District Court for the
18 CENTRAL District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. §
19 1441(a) because Defendant does business within the state of California and the
20 County of Los Angeles.
21
22
23

24 **PARTIES**

25 4. Plaintiff, VAHE MESSERLIAN ("Plaintiff"), is a natural person
26 residing in California and is a "person" as defined by 47 U.S.C. § 153 (39).
27
28

1 offered by Defendant at any time prior to the filing of the instant Complaint.
2 Accordingly, Defendant was not in an established business relationship with
3 Plaintiff pursuant to *47 U.S.C. § 227(b)(1)(C)*.

4 11. All facsimile messages placed by Defendant to Plaintiff utilized an
5 “automatic telephone dialing system”, as defined by *47 U.S.C. § 227(a)(1)*.

6 **CLASS ALLEGATIONS**

7 12. Plaintiff brings this action on behalf of himself and all others
8 similarly situated, as a member of the proposed class (hereafter “The Class”)
9 defined as follows:

10
11 All persons within the United States who received any
12 facsimile messages from Defendant to said person’s
13 telephone when Defendant has not established a prior
14 business relationship with that person, within the four
15 years prior to the filing of this Complaint

16 13. Plaintiff represents, and is a member of, The Class, consisting of All
17 persons within the United States who received any facsimile messages from
18 Defendant to said person’s telephone when Defendant has not established a prior
19 business relationship with that person, within the four years prior to the filing of
20 this Complaint.

21 14. Defendants, their employees and agents are excluded from The
22 Class. Plaintiff does not know the number of members in The Class, but believes
23 the Class members number in the thousands, if not more. Thus, this matter
24 should be certified as a Class Action to assist in the expeditious litigation of the
25 matter.

26 15. The Class is so numerous that the individual joinder of all of its
27 members is impractical. While the exact number and identities of The Class
28 members are unknown to Plaintiff at this time and can only be ascertained

1 through appropriate discovery, Plaintiff is informed and believes and thereon
2 alleges that The Class includes thousands of members. Plaintiff alleges that The
3 Class members may be ascertained by the records maintained by Defendants.

4 16. Plaintiff and members of The Class were harmed by the acts of
5 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
6 and Class members via their telephones thereby invading Plaintiff and Class
7 members privacy, preventing their use of their telephones and causing them to use
8 up their ink.

9 17. Common questions of fact and law exist as to all members of The
10 Class which predominate over any questions affecting only individual members
11 of The Class. These common legal and factual questions, which do not vary
12 between Class members, and which may be determined without reference to the
13 individual circumstances of any Class members, include, but are not limited to,
14 the following:

- 15
- 16 a. Whether, within the four years prior to the filing of this Complaint,
17 Defendant made any facsimile messages (other than those who
18 Defendant has established a prior business relationship) to a Class
19 member using any automatic telephone dialing system;
 - 20 b. Whether Plaintiff and the Class members were damaged thereby, and
21 the extent of such damages; and
 - 22 c. Whether Defendant should be enjoined from engaging in such
23 conduct in the future.

24 18. As a person that received numerous facsimile messages from
25 Defendant using an automatic telephone dialing system, without having
26 established prior business relationship with Defendant, Plaintiff is asserting
27 claims that are typical of The Class.

28 19. Plaintiff will fairly and adequately protect the interests of the
members of The Class. Plaintiff has retained attorneys experienced in the
prosecution of class actions under the Telephone Consumer Protection Act.

20. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

21. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

22. Defendants have acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of the Class as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

23. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-22.

24. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

25. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et

1 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in
 2 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
 3 227(b)(3)(B).

4 26. Plaintiff and the Class members are also entitled to and seek
 5 injunctive relief prohibiting such conduct in the future.

6 **SECOND CAUSE OF ACTION**

7 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

8 **47 U.S.C. §227 et seq.**

9 27. Plaintiff repeats and incorporates by reference into this cause of
 10 action the allegations set forth above at Paragraphs 1-26.

11 28. The foregoing acts and omissions of Defendant constitute numerous
 12 and multiple knowing and/or willful violations of the TCPA, including but not
 13 limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et*
 14 *seq.*

15 29. As a result of Defendant's knowing and/or willful violations of 47
 16 U.S.C. § 227 *et seq.*, Plaintiff and the Class members are entitled an award of
 17 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47
 18 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

19 30. Plaintiff and the Class members are also entitled to and seek
 20 injunctive relief prohibiting such conduct in the future.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

23 **FIRST CAUSE OF ACTION**

24 **Negligent Violations of the Telephone Consumer Protection Act**

25 **47 U.S.C. §227 et seq.**

- 26 • As a result of Defendant's negligent violations of 47 U.S.C.
 27 §227(b)(1), Plaintiff and the Class members are entitled to and
 28 request \$500 in statutory damages, for each and every violation,

pursuant to 47 U.S.C. 227(b)(3)(B); and

- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 30th day of March, 2017.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff